

# THE INSURANCE ACT 2015: THE BASICS

Since 12 August 2016 the Insurance Act 2015 is now law and represents the greatest change to insurance law in the UK in over 100 years. Generally the Act protects policyholders by addressing the perceived bias of the current law in favour of insurers. The Act does, however, introduce some onerous new obligations on policyholders.

## FAIR PRESENTATION OF THE RISKS



Policyholders must give a "fair presentation of the risk", meaning:

1. The policyholder must disclose every material circumstance which it knows or ought to know; or
2. Failing that, the policyholder must give the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries to reveal material information; and
3. The policyholder must make the disclosure in a manner that is reasonably clear and accessible.

A greater onus is put on the insurer to proactively engage with the policyholder. However, the policyholder is required to undertake a "reasonable search" for information both inside and outside its organisation: a potentially onerous task.

## FRAUDULENT CLAIMS



Insurers are not liable to pay fraudulent claims and can elect to terminate their liability for losses incurred after the fraud. The insurer remains liable for losses incurred before the fraud.

## THIRD PARTY (RIGHTS AGAINST INSURERS) ACT 2010



The Act makes changes to the Third Parties (Rights Against Insurers) Act 2010, so that this can now be brought in to force.

## CONTRACTING OUT



With the exception of the abolition of basis clauses, parties can contract out of the new Act provided that certain "transparency requirements" are met, essentially meaning that any disadvantageous terms must be clearly drafted and drawn to a policyholder's attention by the insurer.

## PROPORTIONATE REMEDIES



There are a range of proportionate remedies for breach of the duty of fair presentation.

1. If the breach is deliberate or reckless, the insurer may avoid the policy.
2. If the breach was neither deliberate nor reckless:
  - If the insurer can show it would otherwise have not entered into the policy, it can avoid the policy;
  - If the insurer can show it would have imposed different terms, the policy will be treated as including those terms;
  - If the insurer can show it would have charged a higher premium, the claim will be reduced proportionately.

## BASIS OF CONTRACT CLAUSES



The Act abolishes these clauses, which convert pre-contractual representations (such as information given in the proposal form) into warranties, meaning that any inaccuracy may entitle the insurer to avoid liability.

## WARRANTIES



Previously, breach of warranty discharged an insurer's liability under the policy, no matter how trivial or unconnected the breach is to the loss. Under the new Act:

- Warranties will be "suspensive", meaning liability is only suspended until the breach is rectified; and
- The insurer can only avoid liability for a loss if the breach of warranty in question increased the risk of that loss occurring.

## DAMAGES FOR LATE PAYMENT



The Act did not originally deal with the issue of damages for late payment. The Enterprise Act 2016 has now made it an implied term of every insurance contract that the insurer must pay sums due within a reasonable time, failing which the policyholder will be entitled to sue for damages. This provision comes into force on 5 May 2017.